

## **ORDINANCE 06-29**

**AN ORDINANCE ESTABLISHING A FUND FOR THE  
ASSISTANCE OF PROPERTY OWNERS CAUSING INFILTRATION  
AND INFLOW OF WATER INTO THE SANITARY SEWER SYSTEM OF  
THE TOWN OF WESTFIELD, INDIANA**

**WHEREAS**, on March 2, 1964 the Board of Trustees of the Town of Westfield, Indiana (the "Town") adopted Ordinance No. 1964-3 regulating the connection to and use of public and private sewers and drains, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer system of the Town and providing penalties for violations thereof; and,

**WHEREAS**, on April 8, 1985 the Town Council for the Town (the "Council") adopted Ordinance No. 250 which amended and updated Ordinance No. 1964-3; and

**WHEREAS**, on October 13, 2003 the Council for the Town adopted Ordinance No. 03-20 adopting the Westfield Public Works "Wastewater Service Rules and Regulations" (the "Regulations"); and,

**WHEREAS**, on June 14, 2004 the Council adopted Ordinance 04-23 amending the Regulations; and,

**WHEREAS**, one purpose of the Regulations is to prevent or reduce the infiltration and inflow of water into the Town's sanitary sewer system; and,

**WHEREAS**, the Council recognizes that the Regulations may be particularly burdensome for certain property owners; and,

**WHEREAS**, it continues to be a goal of the Town to reduce the infiltration and inflow of water into the Town's sanitary sewer system; and,

**WHEREAS**, the Council is desirous of providing assistance to certain property owners to enable compliance with the Regulations;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTFIELD, INDIANA:**

**Section 1.** There is hereby established a fund to be known as the "Customer Sewer Lateral Repair Assistance Fund" (the "Fund").

**Section 2.** The Council shall appropriate money into the Fund each year at the level it deems necessary and once the Fund is depleted, applications for assistance from the Fund shall not be accepted until the following year unless the Council appropriates additional money into the Fund.

**Section 3.** Property owners may apply for assistance from the Fund by completing an application to be prepared by the Department of Public Works ("DPW") and DPW shall administer the program.

**Section 4.** Assistance from the Fund shall be in the form of a loan which may be repaid over a period of ten (10) years at an interest rate of three 3% per annum.

**Section 5.** The following criteria shall be given consideration in granting assistance from the Fund:

- a) Assistance will be given to residential property owners only.
- b) Applicant must own and reside in the residence for which they are requesting assistance.
- c) The sewer lateral in violation of the Regulations must have been in existence prior to April 8, 1985.
- d) The amount of assistance for each applicant shall not exceed \$6,000.
- e) Applicants with a permanent disability, blindness or over the age of 65 years shall be given priority.

**Section 6.** The loan shall be documented by the execution of a Secured Note by the applicant in favor of the Town, which Secured Note shall be recorded as a lien against the applicant's real estate.

**Section 7.** Repairs to the sewer lateral must be completed by the property owner and approved by the DPW within ninety (90) days of an applicant receiving a loan from the Fund or else the Secured Note will become immediately due and payable.

**Section 8.** All provisions of the DPW Regulations remain in full force and effect.

**Section 9.** The actions of the Town staff working under this Ordinance are to be deemed in conformity with Town policy.

**Section 10.** Any portion of this Ordinance that may later be deemed invalid shall not effect the remaining provisions.

**Section 11.** This Ordinance shall be in full force and effect in accordance with Indiana law, upon its passage and any publication and applicable waiting period, as provided by the laws of the State of Indiana.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

ALL OF WHICH IS ORDAINED this 14 day of Aug, 2006.

**WESTFIELD TOWN COUNCIL**

**Voting For**

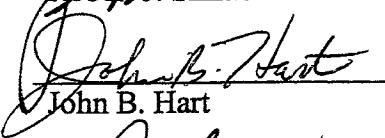
**Voting Against**

**Abstain**

  
Robert J. Smith

Robert J. Smith

Robert J. Smith

  
John B. Hart

John B. Hart

John B. Hart

  
David Mikesell

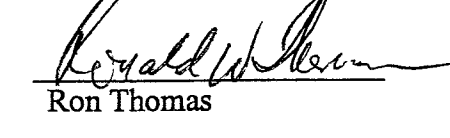
David Mikesell

David Mikesell

  
Teresa Otis Skelton

Teresa Otis Skelton


Teresa Otis Skelton

  
Ron Thomas

Ron Thomas

Ron Thomas

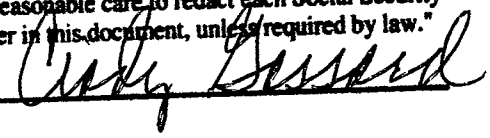
ATTEST:

  
Clerk-Treasurer, Cindy J. Gossard

This Ordinance prepared by:  
Sue A. Beesley  
Bingham McHale LLP

"I affirm, under the penalties for perjury, that I have  
taken reasonable care to redact each Social Security  
number in this document, unless required by law."

(name)



## MORTGAGE

**THIS INDENTURE WITNESSETH**, that \_\_\_\_\_ (the "Mortgagor") **MORTGAGES AND WARRANTS** to the **TOWN OF WESTFIELD, INDIANA** (the "Mortgagee") the following described real estate in Indianapolis, Indiana:

See Exhibit A attached hereto and made a part hereof, which is commonly known as \_\_\_\_\_, Westfield, Indiana,

together with all rights, privileges, interests, easements, hereditaments, appurtenances, fixtures and improvements now or hereafter belonging, appertaining, attached to, or used in connection with such real estate and all rents, profits, issues and proceeds therefrom and thereof (collectively, the "Mortgaged Premises").

This Mortgage is given to secure the performance of the provisions hereof and the payment of the indebtedness evidenced by that certain Promissory Note dated as of \_\_\_\_\_, 20\_\_, which was executed by Mortgagor to the order of Mortgagee, in the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and all modifications, extensions and renewals of such Promissory Note (collectively, the "Note").

### MORTGAGOR COVENANTS AND AGREES WITH MORTGAGEE THAT:

1. **Encumbrance of the Property.** With the exception of the prior mortgage granted to \_\_\_\_\_ by the Mortgagor on the Mortgaged Premises recorded in the Office of the Recorder of Hamilton County on \_\_\_\_\_, \_\_\_\_ as Instrument No. \_\_\_\_\_ (the "First Mortgage") to secure an obligation in the principal amount of \$\_\_\_\_\_ together with interest, costs and fees as provided in the First Mortgage, Mortgagor shall not cause, permit or suffer the creation or existence of any lien, encumbrance, security interest or other charge upon, against or affecting the Mortgaged Premises or any part thereof, whether such lien, encumbrance, security interest or other charge is prior to, upon a parity with or junior to this Mortgage.
2. **Payment of Indebtedness.** The Mortgagor shall pay when due all indebtedness secured by this Mortgage as provided in the Note without relief from valuation and appraisal laws. The Mortgagor further guarantees that the total outstanding indebtedness secured by this Mortgage shall be paid to Mortgagee within ten (10) days of any transfer, sale, or assignment of the Mortgaged Premises, in whole or in part, and whether said transfer, sale or assignment is voluntary or involuntary, direct or indirect.
3. **Deterioration of the Property.** Mortgagor shall not commit, cause, permit or suffer waste or physical deterioration of the Mortgaged Premises.
4. **Violation of Laws.** Mortgagor shall not violate or permit violation of any ordinance, law, regulation, order or requirement concerning the Mortgaged Premises.
5. **Damage or Destruction.** If all or a portion of the Mortgaged Premises is damaged or destroyed by fire or other casualty, Mortgagor shall notify Mortgagee immediately. All insurance proceeds, if any, payable as a result of such damage or destruction shall be applied in reduction of the indebtedness secured hereby, whether or not then due and payable.

6. **Taxes and Assessments.** Mortgagor shall pay all taxes or assessments levied or assessed against the Mortgaged Premises, or any part thereof, as and when due, and before penalties accrue.

7. **Advancements to Protect Security.** Mortgagee may, at its option, advance and pay all sums necessary to protect and preserve the security intended to be given by this Mortgage. All sums so advanced and paid by Mortgagee shall become a part of the indebtedness secured hereby, shall be due and payable on demand, and shall bear interest from the date or dates of payment at the applicable interest rate under the Note. Such sums may include, but are not limited to, taxes, assessments, liens and encumbrances and all costs, expenses and attorneys' fees incurred by Mortgagee in respect of any and all legal or equitable proceedings which relate to this Mortgage or to the Mortgaged Premises.

8. **Default by Mortgagor; Remedies of Mortgagee.** Upon default by Mortgagor in the payment of any amount due under the Note or upon default in the performance of any other covenant or agreement of Mortgagor under the Note or hereunder: (i) the entire indebtedness secured hereby shall become immediately due and payable at the option of Mortgagee, without notice and Mortgagee shall be entitled to recover all of its attorneys' fees and costs of collection, (ii) this Mortgage may be foreclosed, and/or (iii) upon application to a court of competent jurisdiction, without notice and without the requirement of any bond and regardless of the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound to pay such indebtedness, Mortgagee shall be entitled to the appointment of a receiver to take possession of and to operate the Mortgaged Premises and to collect the rents, profits, issues and revenues thereof. Upon foreclosure Mortgagee may obtain appropriate title evidence with respect to the Mortgaged Premises and may add the cost thereof to the principal balance due and secured hereby. In the case of any sale of the Mortgaged Premises pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purposes of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Note and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt.

9. **Non-Waiver; Remedies Cumulative.** No delay by Mortgagee in the exercise of any of its rights hereunder shall preclude the exercise thereof so long as Mortgagor is in default hereunder, and no failure of Mortgagee to exercise any of its rights hereunder shall preclude the exercise thereof in the event of a subsequent default by Mortgagor hereunder. Mortgagee may enforce any one or more of its rights or remedies hereunder successively or concurrently.

10. **Extensions, Reductions, Renewals; Continued Liability of Mortgagor.** Mortgagee at its option may extend the time for the payment of the indebtedness secured hereby, reduce the payments thereon or accept a renewal note or notes therefor, without consent of any junior lien holder and without the consent of Mortgagor if Mortgagor has then parted with title to the Mortgaged Premises. No such extension, reduction or renewal shall affect the priority of this Mortgage or impair the security hereof in any manner whatsoever or release, discharge or affect in any manner the personal liability of Mortgagor to Mortgagee.

11. **General Agreement of Parties.** All rights and obligations hereunder shall extend to and be binding upon the successors and assigns of Mortgagor and Mortgagee, respectively. The word "Mortgagee" shall include the holder or holders from time to time of the Note. The titles of the several paragraphs of this Mortgage are for convenience only and do not define, limit or construe the contents of such paragraphs.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**MORTGAGOR:**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF HAMILTON )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ who acknowledged the execution of the foregoing instrument this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires:

County of Residence:

\_\_\_\_\_

\_\_\_\_\_

This instrument was prepared by \_\_\_\_\_

## INSTALLMENT PROMISSORY NOTE

\$ \_\_\_\_\_

Due Date: \_\_\_\_\_, \_\_\_\_\_

On or before the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, for value received, \_\_\_\_\_ ("Borrower"), promises to pay to the order of the Town of Westfield, Indiana ("Lender") the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), at Westfield, Indiana, or at such other place as the holder hereof may direct in writing, with a fixed rate of interest accruing on the unpaid principal balance at the rate of 3% per annum, with attorneys' fees and costs of collection, and without relief from valuation and appraisement laws.

Interest shall be paid monthly on \_\_\_\_\_ of each month, beginning \_\_\_\_\_, 20\_\_\_. Principal shall be amortized on a straight-line basis, payable in one hundred twenty (120) equal monthly installments each based on the then outstanding principal balance hereunder, beginning \_\_\_\_\_, \_\_\_\_\_, and continuing every month thereafter through final maturity.

The Borrower is entitled to prepay any or all of the interest and/or principal due under this Note at any time without penalty. The proceeds of this loan will be used for repairs and improvements to stop the infiltration and inflow of water into the sanitary sewer system of the Lender, and for no other purpose.

This Note evidences an installment loan to Borrower by Lender.

All payments shall be applied first to the payment of all accrued and unpaid interest and the balance, if any, shall be applied to the reduction of the outstanding principal balance of this Note.

This Note is secured by a Mortgage of even date (the "Mortgage"), and any and all amendments and replacements thereto, executed by Borrower in favor of Lender, which Borrower hereby reaffirms as security for the payment hereof.

In the event of the nonpayment of any installment of principal or interest of this Note within ten (10) days of the date when due, or in the event of the occurrence of an event of default under the Mortgage, the whole sum of principal and accrued interest shall, at the option of Lender, immediately become due and payable without notice or demand, anything contained herein or in any instrument now or hereafter securing this Note to the contrary notwithstanding, time being of the essence. Said option shall continue until such default(s) have been cured.

Borrower expressly waives demand, presentment, protest, notice of protest, and notice of nonpayment or dishonor of this Note, and consents that Lender may extend the time of payment or otherwise modify the terms of payment of any part of the whole of the debt evidenced by this Note, at the request of any other person liable hereon, and such consent shall not alter nor diminish the liability of any person.

No delay or omission on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy shall preclude other or further exercise thereof or of any other right or remedy.



Borrower agrees to pay all costs of collection, including attorneys' fees, in case the principal of this Note or any payment on the principal or any interest thereon is not paid at the respective maturity thereof and to pay all costs, including attorneys' fees, in case it becomes necessary to protect the security hereof, regardless of whether suit be brought, all without relief from valuation or appraisal laws, or Lender may at his option elect to add said attorneys' fees and expenses to the principal balance of such obligations.

Whenever used in this Note, the singular includes the plural and the plural includes the singular, the masculine includes the feminine and the neuter, and the terms "Borrower" and "Lender" are deemed to include those persons named in the opening paragraph of this Note and their respective successors and assigns.

Notwithstanding any provisions herein or in any instrument now or hereafter securing this Note, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of the State of Indiana.

The rights or remedies of the holder hereof as provided in this Note and the Mortgage, as amended, shall be cumulative and concurrent, and may be pursued singly, successively or together.

This Note shall be governed by the laws of the State of Indiana, without regard to any conflict of law provisions. Borrower hereby irrevocably and unconditionally: (a) submits for himself and his property in any legal action or proceeding commenced by the holder of this Note hereto relating to the enforcement of this Note or any security interest thereto, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of Indiana, the courts of the United States of America for the Southern District of Indiana, and appellate courts from any thereof; (b) consents that any such action or proceeding may be brought in such courts, and waives any objection that he may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same; (c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to Borrower at his address set forth above or at such other address of which the holder of this Note shall have been notified in writing; and (d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

IN WITNESS WHEREOF, the undersigned Borrower has caused this Promissory Note to be executed the day and year first above written.

BORROWER

By: \_\_\_\_\_

Name: \_\_\_\_\_